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DISTRICT OF UTAH

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*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**UNSEALED DECLARATION OF
TODD M. SHAUGHNESSY IN SUPPORT
OF IBM'S OPPOSITION TO SCO'S
MOTION FOR LEAVE TO FILE A
THIRD AMENDED COMPLAINT**

[Docket No. 345]

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

DECLARATION OF
TODD M. SHAUGHNESSY IN SUPPORT
OF IBM'S OPPOSITION TO SCO'S
MOTION FOR LEAVE TO FILE A THIRD
AMENDED COMPLAINT

FILED UNDER SEAL

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Todd M. Shaughnessy, declare as follows:

1. I represent IBM in the lawsuit brought by SCO against IBM, entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). This declaration is submitted in support of Defendant/Counterclaim-Plaintiff IBM's Opposition to Plaintiff/Counterclaim-Defendant SCO's Motion for Leave to File a Third Amended Complaint.

2. Attached hereto are true and correct copies of the following documents:

- (a) Exhibit 1 is the Joint Development Agreement (Number 4998CR0349) between The Santa Cruz Operation, Inc. ("Santa Cruz") and IBM, dated October 23, 1998, bates numbered SCO1184174-SCO1184230.
- (b) Exhibit 2 is a document titled "Options for Distribution and Royalty Flow - Draft 1", dated September 10, 1998, bates numbered 1710141628-1710141629.
- (c) Exhibit 3 is a presentation titled "genus: An IBM/SCO UNIX Project Marketing Plan Development", bates numbered SCO1233395- SCO1233407.
- (d) Exhibit 4 is a Santa Cruz presentation titled "DCAP and Monterey", dated November 4, 1998, bates numbered SCO1311079- SCO1311102.
- (e) Exhibit 5 is the Monterey-64 Release 1 Product Requirement Specification approved by Santa Cruz and IBM, dated February 19, 1999, bates numbered SCO1235271- SCO1235331.
- (f) Exhibit 6 is an email from Michael Orr of Santa Cruz to Tilak Agerwala of IBM, dated September 7, 1999, bates numbered 181444069-181444071.

(g) Exhibit 7 is a presentation titled "IBM-SCO Family Unix Technical Proposal", dated September 2, 1998, bates numbered SCO1310620-SCO1310637.

(h) Exhibit 8 is a presentation titled "Establish Monterey as the UNIX Industry Standard", bates numbered SCO1230470-SCO1230526.

(i) Exhibit 9 is a Santa Cruz presentation titled "SCO Server Roadmap and Operating System Strategy", dated February 2000, bates numbered SCO1352656-SCO1352716.

(j) Exhibit 10 is an internal Santa Cruz email from John Boland of Santa Cruz, dated August 11, 2000, bates numbered SCO1374969-SCO1374971.

(k) Exhibit 11 is a printout from the AIX 5L website, dated May 2, 2001, bates numbered SCO1231079.

(l) Exhibit 12 is a document titled "Differences Between IA-64 and PPC for 9/00 Release", bates numbered SCO1242161- SCO1242164.

(m) Exhibit 13 is an industry report published by IDC, titled "IBM Announces AIX 5L Beta - Introducing the Next Generation of AIX", dated August 2000, bates numbered SCO1294138-SCO1294142.

(n) Exhibit 14 is an article by Lucy Sherriff titled "IBM Claims AIX 5L is Proof of Monterey Concept", from The Register, dated August 8, 2000, available at http://www.theregister.co.uk/2000/08/08/ibm_claims_aix_5l/print.html.

(o) Exhibit 15 is an article by Ed Scannell titled "IBM Making Linux, Server Play", from InfoWorld, dated August 10, 2000, available at LEXIS, News Library, Computing and Technology File.

(p) Exhibit 16 is an industry report by Lee Kroon titled "IBM's AIX 5L: An Examination of a Next-Generation Unix Operating System", published by Andrews Consulting Group, Inc., dated June 2001.

(q) Exhibit 17 is an article by Peter Williams titled "Enterprise Week - Analysis: IBM Builds New AIX Power Base", from VNU NET, dated September 24, 2001, available at LEXIS, News Library, Computing and Technology File.

(r) Exhibit 18 is an IBM Software Announcement titled "IBM AIX 5L Version 5.1 Advanced UNIX Operating System with Linux Affinity Delivers the Most Powerful and Flexible Choice for e-business and Enterprise Servers", dated April 17, 2001.

(s) Exhibit 19 is an IBM product announcement titled "IBM US Announcement Supplemental Information", dated April 17, 2001.

(t) Exhibit 20 is a document published by IBM titled "AIX 5L for POWER Version 5.1 Release Notes".

(u) Exhibit 21 is a user's guide published by IBM titled "Printing for Fun and Profit under AIX 5L", dated March 2001, available at
<http://www.redbooks.ibm.com/abstracts/sg246018.html?Open>.

(v) Exhibit 22 is excerpts from a user's guide published by IBM titled "AIX 5L Differences Guide Version 5.1 Edition", dated June 2001.

(w) Exhibit 23 is excerpts from a user's guide published by IBM titled "Problem Solving and Troubleshooting in AIX 5L", dated January 2002, available at
<http://www.redbooks.ibm.com/abstracts/sg245496.html?Open>.

(x) Exhibit 24 is an article by Daniel Lyons titled "SCO's 'Smoking Gun' Versus IBM", from Forbes.com, dated August 4, 2004, available at http://www.forbes.com/2004/08/04/cz_dl_0804sco_print.html.

(y) Exhibit 25 is an article by Maureen O'Gara titled "Temporary Ceasefire Called Between SCO and BayStar", from Linux Business Week, dated August 30, 2004, available at http://www.linuxbusinessweek.com/story/46147_p.htm.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 30th, 2004.

Salt Lake City, Utah



Todd M. Shaughnessy

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2004, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
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Robert Silver
Edward Normand
Sean Eskovitz
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Amy F. Sorenson

Exhibits/
Attachments
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Please see the
case file.